IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

RAM PRATAP. V. LRs. OF MANSUKHRAM AND OTHERS.

D.B. CIVIL SPECIAL APPEAL (W) NO.284/2007, against the Order dated 17.1.2007, passed by the learned Single Judge in SBCWP No.4285/90.

DATE OF JUDGMENT :::: 27th July, 2007.

PRESENT

HON'BLE MR. JUSTICE P.B.MAJMUDAR

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.N.S.Acharya, for Appellant.
Mr.H.S.Sandhu) for Respondents.
Mr.R.S.Gill)

REPORTABLE: **BY THE COURT: (PER HON'BLE BHANDARI, J.):-**

This appeal has been filed to challenge the judgment of the learned Single Judge dated 17th January, 2007, decision rendered by the Board of Revenue dated 30th July, 1990 , as well as the decision of the Revenue Appellate Authority dated 12th

September, 1983. The appellant further prayed for restoration of the order passed by the Assistant Collector dated 5th November, 1981.

The facts giving rise to the controversy are that the appellant – petitioner preferred a suit under Sections 88, 188 an 92-A of the Rajasthan Tenancy Act, 1995 (hereinafter referred to as 'the Act of 1955') before the Assistant Collector, Nohar. The appellant had come out with a case that land of old Khasra No.346 was in continued possession of the appellant's father since before Samvat 1990 and, in Samvat 2005, the appellant was separated from his father and the land was given to him. Since Samvat 2005, the appellant claimed to be in continuous peaceful and unobstructed possession of the land. In para 2 of the plaint, the appellant sated that he was eligible for allotment of said land as per Bhakhra Colonization Land Settlement and Allotment Rules, 1955 (in short, 'the Rules of 1955').The appellant submitted that in pursuant to the Rules of 1955, he had submitted an application for allotment of land as he was not only adult, having independent family, but was otherwise having no other land. It was alleged that due to the political pressure, the land was allotted to non-appellants No. 1 and 2, while appellant continued to be in possession. According to the appellant, allotment of the land to non-appellants No. 1 and 2 was not only illegal being contrary to the Rules of 1955, but was

in ignorance of the rights of the appellant. The appellant further submitted that various criminal and other proceedings were initiated by the parties, but therein also, possession of the appellant was upheld. Despite that, non-appellants No. 1 and 2 tried to dispossess the appellant from the land in reference. Thus, the appellant was left with no option but to file a suit before the Court of the Assistant Collector. The suit filed by the appellant was contested by the non-appellants No. 1 and 2. It was submitted that the appellant was not entitled for allotment of land under the Rules of 1955 and otherwise also, the application submitted by the appellant for allotment of land to him was considered and finally decided by the Additional Commissioner, Bikaner Division vide his order dated 23.1.1961, whereby the appellant's appeal was dismissed. The non-appellants further submitted that the allotment of land was not influenced by any political pressure, but the same was done on its merit. It was submitted that the non-appellant belongs to reserve caste and thereby, considering their application, the Revenue Authorities took a decision to allot land in reference to non-appellants No. 1 and 2. It was the case of the non-appellants that after the decision of the Additional Commissioner dated 23.1.1961, the appellant cannot seek allotment of land indirectly, which otherwise he could not secure directly. Thus, non-appellants prayed for dismissal of the suit.

The Assistant Collector, vide his judgment dated 5th November, 1981, decided the suit in favour of the appellant, holding that the plaintiff was entitled for allotment, considering the fact that in Girdawari of Samvat 2007 to 2012 also name of Rampratap was entered. It was further considered by the Assistant Collector that in Girdawari of Samvat 2009 to 2012, the land was being cultivated by Rampratap, hence according to the Court of the Assistant Collector, the land was in possession of Rampratap thereby application for allotment so rejected, was held to be illegal. Aggrieved by the order of the Assistant Collector, non-appellants preferred appeal before the Revenue Appellate Authority, where they succeeded. Being aggrieved by the order of the Revenue Appellate Authority, appellant preferred appeal before the Board of Revenue, which was dismissed vide the order dated 30th July, 1990. The appellant's writ petition was also dismissed by the learned single Judge, affirming the judgment of th Board of Revenue as well as Revenue Appellate 'Authority, hence this appeal.

The appellant submitted that as per Bikaner Tenancy Act, he was a Khatedar of the land and thereby as per the provisions of the Bikaner Tenancy Act itself, he should be treated as "Khatedar", hence under the Rules of 1955, the land could not have been allotted to the non-appellants No. 1 and 2. It was submitted that as per Section 5 (24) of the Bikaner Tenancy Act

coupled with Section 24 of the said Act, he became a "Khatedar" of the land as the land was being possessed not only by him, but his father as well as grand-father. The further case of the appellant is that after coming into force of the Rajasthan Tenancy Act, 1955, he became "Khatedar", even by virtue of the Act of 1955. It was submitted that the Act of 1955 came into force on 15.10.1955 and as on the aforesaid relevant date, he was in possession of the land thus acquired Khatedari rights by operation of law. It was further asserted bythe appellant that once he became Khatedar of the land in reference under the Act of 1955, the land was not available for allotment under the Rules of 1955 as it cannot either be considered to be a Government land or unoccupied land.

Learned counsel for the appellant further submitted that though the Rajasthan Colonization Act of 1954 came in existence in the year, 1954 itself, however, village 'Phephana' was declared to be "Colony Area" vide the Notification dated 24th December, 1955 under the Rajasthan Colonization Act, hence before 24th December, 1955, village Phephana was not part of the colony area so as to cover this area by the provisions of the Rajasthan Colonization Act of 1954 and Rules made thereunder. According to the appellant, the allotment Rules of 1955 were not applicable to the land in question till 23.12.1955 and before that he acquired Khatedari rights. However, under some ill-

advise, appellant made an application for allotment of the said land in the year, 1958, but his application as well as appeal were rejected. It was further submitted that even if an application for allotment under the Rules of 1955 was made by the appellant, treating it to be a Government land, the rights of the appellant accrued by operation of law under the provision of Rajasthan Tenancy Act, 1955, cannot be wiped out. Learned counsel for the appellant submitted that his suit was rightly accepted by the Assistant Collector, but erroneously reversed by the Revenue Appellate Authority, after recording a fact that the land in question was under lease with the appellant, though there was no background available to show that the appellant was a lessee under the Bikaner Tenancy Act, thereby finding recorded by the Revenue Appellate Authority in that regard as was affirmed by the Revenue Board and the learned Single Judge calls for interference. According to the learned counsel for the appellant, Girdawari of Samvat 2007 to 2012 was not relevant to decide revenue rights of the appellant under Section 140 of the Rajasthan Land Revenue Act, inasmuch as, the appellant's name was entered in Jamabandis and those Jamabandis were also produced before the Competent Authority. Thus, having acquired Khatedari rights, it cannot be nullified by the Revenue Authorities.

Learned counsel for the appellant further submitted that

the findings recorded by the Revenue Appellate Authority to arrive at the conclusions adverse to the appellant were totally perverse as there was no material available on record to show that the land in question was ever leased under the Bikaner Tenancy Act. It was further being argued that the Assistant Collector having made a declaration of Khatedari right of the appellant, it was not reversed in any of the judgments, under challenge in appeal, thus declaration became final. It was further argued that since the Rajasthan Tenancy Act came into force from 15.10.1955 and as per provisions of Section 15 of the Act of 1955, the petitioner having become "Khatedar" by operation of law then subsequent Notification dated 24.12.1955, declaring village Phephana to be colony area, cannot take away rights of the appellant by treating the said Notification to be retrospective.

Learned counsel for the appellant even question the decision of the Board of Revenue on the ground that the finding recorded by the Board of Revenue and R.A.A. regarding interpolation entries in Girdawari was not proper and once the "Khatedari" rights accrued in favour of the appellant, the observation regarding interpolation of entries in Girdawari becomes irrelevant, more so, when, according to the appellant, it was not the case of non-appellants that there was interpolation of entries in Girdawari.

So far as the issue of adverse possession is concerned, it

was submitted by the appellant that non-appellants No. 1 and 2 were allotted land in question in the year, 1958 and, thereafter also, the appellants are in peaceful possession . Thus, adverse possession qua non-appellants No. 1 and 2 is established, in view of the expiry of the period of 12 years of peaceful possession in between. According to the learned counsel for the appellant, the adverse possession of the appellant qua the State was wrongly being considered by the learned Single Judge and thereby the period of 30 years was wrongly being taken into consideration to determine the right for adverse possession. To support all the contentions, the learned counsel for the appellant referred following judgments to show that a writ of certiorari can be granted on the pleas which goes in the root of the matter :-

AIR 1960 SC 1191 – A. St.Arunachalam Pillai v. Southern Roadways Ltd. and another -

> In a petition under Article 226 for a writ of certiorari to quash certain order, the High Court acts rightly in allowing the petitioner to urge a plea which goes to the root of the matter ... although the petitioner had submitted to the jurisdiction of the authority whose jurisdiction was being question by the new plea had not taken the objection in his petition under Art. 226"

1976 (2) SCC 868 – Swarn Singh and another v. State of

Punjab and Others -

> "Certiorari jurisdiction can be exercised for correcting error of jurisdiction and where the impugned order is based on consideration of irrelevant and extraneous grounds."

1982 (2) SCC 134 – Government of Andhra Pradesh v.Thummala Krishna Rao and another -

> "Summary proceedings can be initiated only where unauthorized occupation of Government property is not disputed – but where title to the land is bona fide disputed by the occupant, such dispute must be adjudicated not by summary proceedings but by civil suit – bona fides of the occupant's claim can be inferred from his occupation for a long period."

JT 1955 (5) SC 481 – State of Rajathan v. Smt.Padmavati Devi (dead) by Lrs & Others -

> "Summary procedure is not the legal process suited for adjudication of complicated question of title where the person makes a bona fide claim regarding his right to be in possession."

Per Contra, learned counsel appearing for the non-

appellants submitted that the appellant never claimed declaration of his "Khatedari" rights under the Bikaner Tenancy Act. It was submitted that no material was placed to establish such right. According to the learned counsel for the non-appellants, even appellant had not claimed their Khatedari rights under the Act of 1955 while filing the suit. Referring to the suit, learned counsel for the non-appellants submitted that the appellant basically challenged the allotment of land under the Rules of 1955. While referring certain paras of the suit, it was specifically submitted that the appellants claimed their rights of allotment under the Rules of 1955 on the basis of possession and thereby prayed that the allotment of land to the non-appellants under the Ruls of 1955 be declared as void ab initio. It was further submitted that the appellant was not in possession of the land at the time when the Act of 1955 was given effect to, inasmuch as, Girdawari of Samvat 2007 to 2012 was showing clear interpolation of name of Ram Pratap which was rightly noticed by the Revenue Appellate Authority as well as the Board of Revenue. Hence it is submitted that the appellant is not entitled to take benefit of Section 15 of the Act of 1955 in Absence of any proof of possession as on 15.10.1955. It was further submitted that even possession of land does not create any "Khatedari" right in vaour of the appellant under Section 15 of the Act of 1955, unless it is provided that the appellant was

a tenant and and who was paying rent having contractual relationship to occupy the land either impliedly or expressly. According to the learned counsel for the non-appellants, the appellants failed to rove their case which was basically to claim allotment of land in their favour and, therefore, by filing a suit, they had challenged the allotment of land made in favour of non-appellant.

Learned counsel for the respondents further submitted that the land in question was a Government land and cannot be said to be occupied land in absence of any material to possess the land by lawful means. It was submitted that a trespasser cannot claim any right under the Rajasthan Tenancy Act. The further case of the non-appellant is that as per the proviso to Section 15 of the Act of 1955, lands falling in Gang canal, Bhakhra, Chambal or Jawai Project area were not available to claim "Khatedari" rights. According to them, even if Notification to declare an area to be colony was issued on 24.12.1955 under the Rajasthan Colonization Act, 1954 then also, no "Khatedeari" rights can be claimed by the appellant in regard to the lands notified under the Act as project area. Section 15 of the Rajasthan Tenancy Act was referred to demonstrate that no "Khatedari" rights accrued in favour of the appellant. Section 15 of the Rajasthan Tenancy Act of 1955 reads thus :-

"**15. Khatedar tenants** – (1) Subject

to the provision of section 16 (and clause (d) of sub-section (1) of Section 180) every person who, at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant of Khudkasht or who is, after the commencement of this Act, admitted a a tenant otherwise than a sub-tenant or tenant of Khudkasht or an allottee of land under, and in accordance with, rules made under Section 101 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari rights in accordance with provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (Rajasthan Act VI of 1952) or of any other law for the time being in force shall be a khatedar tenant and shall, subject to the provision of this Act be entitled to all the rights conferred; and be subject to all the liabilities imposed on Khatedar tenants by this Act.

Provided that no Khatedari rights shall accrue under this section to any tenant, to whom land is or has been let out temporarily in Gang Canal, Bhakra Chambal or Jawai project area or any other area notified in this behalf by the State Government.

(2) Notwithstanding anything contained in sub-section (1), Khatedari rights shall not accrue there under to any person to whom land had been let out before the commencement of this Act by the State Government in furtherance of the Grow More Food Campaign or under some special order subject to some specified conditions or in pursuance of some statutory or non-statutory rules and who shall have, before such commencement, made a default in securing the objective of such campaign or a breach of any such order, condition or rule.

(3) Any person referred to in sub-section (2) may, within three years from the date of commencement of this Act and on payment of a court-fee of (twenty five naye paise) apply to the Assistant Collector having jurisdiction praying for a declaration that

acquired Khatedari right under sub-section (1) in the land held by him.

(4) Such application may be made on any of the any of the following grounds, namely :

(a) that the land held by him was let out to him after the commencement of this Act.
(b) that it was not let out to him in any of the circumstances specified in sub-section (2).
(c) that when the land was so led out to him he was not apprised of such circumstances.
(d) that he had, before such commencement made no default or breach of the nature specified in sub-section (2).

(5) The Assistant Collector shall, upon the presentation of an application under sub-section (3), make inquiry in the prescribed manner and afford reasonable opportunity to the applicant of being heard and shall, if he does not reject the application, declare the applicant to have become Khatedar tenant of his holding in accordance with the subject to the provisions of sub-section (1)."

According to the learned counsel for the non-appellants, though the "Khatedar tenant" has not been defined in the Act of 1955, however, the literal meaning of word "Khatedar" is one to holds a "Khata", i.e., an account or a relation. There is a relationship of tenant and landlord in term "Khatedar". Hence as per Section 5 (43) of the Act of 1955, appellant was not a tenant at the commencement of the Act, as two conditions are required to be fulfilled for that purposes, namely, (a) the rent is or would be payable by him under (b) some contract express or implied, and

both these conditions are mandatory. On the commencement of the Act from 15.10.1955, i.e., Samvat 2012, a person who was in possession of the land under contract for paying rent, on that day, can claim "Khatedari" rights under this Section. According to the non-appellants, the appellant has failed to submit proof that he was paying rent under the express or implied contract, therefore, claim of "Khatedari " under Section 15 of the Act of 1955 is not tenable, more so, when no such rights were specifically claimed before the courts below. Thus, even the appellants cannot and should not be allowed to make out a new case. The learned counsel for the non-appellants referred certain judgments to show that the "Khatedari" rights cannot be conferred under Section 15, merely on the basis of the possession. The following judgments were cited by the learned counsel for the non-appellants, on the issue, referred to above :-

(1) State of Rajasthan v. Moda & Others 1974 RRD 423.

(2) State V. Moda 1980 RRD 464.

(3) Gainda Lal v. State 1979 RRD 332.

(4) Mangi Lal v. State 1976 RRD 356.

In the judgments, referred to above, it was held that no Khatedari rights can be conferred, merely on the basis of the possession, it was further held that in absence of required proof of payment of rent under an express or implied contract,

Khatedari rights claimed by the appellant under Section 15 cannot accepted. It was further submitted that Girdawaris of Samvat 2007 to 2012 having interpolation of name of appellant thus, cannot be relied and, for that purposes, reference of the judgment of the Additional Commissioner rejecting the appeal of the appellant was given to the Court during the course of arguments after furnishing a copy of the order. The case of the non-appellant is that the land in question was a Government land and and had rightly been allotted to them. It was further stated that appellant had not taken possession of the land from them, thus question of adverse possession of appellant does not arise. So far as issue of adverse possession against the State government, the appellant submitted that they support the judgment of the learned Single Judge as the period of 30 years has not expired and otherwise, it it not a case where illegal possession of the appellant was not threatened or taken by the non-appellant. It was submitted that the non-appellant has taken possession of land in question. Thus, the prayer of the non-appellant is that the appeal being devoid of merit, thus same should be dismissed.

We have considered the rival arguments of the learned counsel for the parties and gone through the record carefully.

The perusal of the suit does not reveal that the appellant had made any claim for tenancy right under the Bikaner Tenancy

Act, rather before RAA as well as Board of Revenue, no such claim was made by the appellant even in the writ petition also, no argument of Khatedari right under the Bikaner Tenancy Act was raised, it seems to be for the reason that no factual basis to claim such right was made by the appellant. While filing suit before Assistant Collector. Thus, in the backround of this, the appellant cannot be allowed to make out a new case for claim of Khatedari rights under Bikaner Tenancy Act, for the first time at the appellate stage more so, when the issue of Khatdari rights under Bikaner Tenancy Act was not raised, even before the learned Single Judge and even before the lower Courts. Thus, issue regarding Khatedari rights under the Bikaner Tenancy Act cannot be allowed to be raised at the appellate stage in the absence of factual foundation, because it is not purely a question of law.

So far as claim of the appellant regarding his Khatedari rights under Section 15 of the Act of 1955, the main contentions required to be taken note of from the suit are that according to the appellant, he separated himself from his father in Samvat 2005 and started cultivating the land of Khasra No.346, hence having peaceful possession of land of Khasra No.346 at the time of coming into force of the Rajasthan Tenancy Act in Samvat 2012, the appellant became Khatedar. The rights under the Act of 1955 were not asserted by the appellant before the trial

Court in specific manner, however, facts pertaining to possession of the land was asserted in the plaint thus, the appellant was permitted to raise above legal issue, even at the appellate stage. The case as made out in the suit, however, does not demonstrate that the appellant has submitted facts pertaining to Khatdari rights under Section 15 other than one fact pertaining to possession of the land. The appellant had not submitted that he was a "tenant" of the land, otherwise than a sub-tenant by a tenant of Khudkasht. The word "tenant" has been defined under the Act of 1955 which reads thus :-

"**S.5 (43).** "tenant" shall mean the person by whom rent is , or, but for a contract, express or implied, would be, payable and, except when the contrary intention appears, shall include -

(a) in the Abu area, a permanent tenant or a protected tenant.

(b) In the Ajmer area, an ex-proprietary tenant or an occupancy tenant or a hereditary tenant or a non-occupancy tenant or a Bhooswami or a Kashtkar,

(c) In this Sunel area, an ex-proprietary tenant or a pakka tenant or an ordinary tenant.

(d) a co-tenant,

(e) a grove-holder,

(f) a village servant,

(g) a tenant holding from a land owner,

(h) a tenant of Khudkasht,

(i) a mortgagee of tenancy rights, and

(j) a sub-tenant,

but shall not include a grantee at a favourable rate of rent or an ijaredar or thekadar or a trespasser."

To claim Khatedari right under Section 15 of the Act of 1955, one is required to establish that the at the commencement of the Act of 1955, the person was tenant of the land to acquire Khatedari rights. Mere possession of land cannot give Khtedari right under Section 15, unless it is proved that the plaintiff (appellant) was a tenant within the meaning of Section 5 (43) of the Act of 1955 establishing two points, namely, (i) rent was payable by them, (ii) there was a contract express or implied to the contrary. The appellant had produced certain Girdawaris to show his possession and not payment of rent. In any case, those Girdawaris were having interpolation of the name of Ram Pratap, so they were rightly disbelieved and, in those circumstances, even payment of rent by the appellant is not established from the documents, apart from the fact that it was not even being pleaded by the appellant in his plaint. Thus, in absence of a proof of appellant's being "tenant", no Khatedari rights for the land in question can be claimed under the Act of 1955, thus appellant is not a Khatedar under the aforesaid Act. The area of village Phephana became Colony area vide the Notification dated 24.12.1955 under the provisions of the Rajasthan Colonization Act of 1954 i.e,after 15.10.1955. In

these circumstances, even the argument of the learned counsel for the appellant regarding retrospective effect to the Notification dated 24.10.1955 declaring village Phephana to be an area of falling in Bhakra Project, need not to be dealt with. In fact, the argument of the appellant that the Notification dated 24.12.1955 cannot operate retrospectively becomes academic in nature, because the said question was raised by the appellant on the ground that having acquired Khatedari rights on coming into force of the Rajasthan Tenancy Act of 1955 w.e.f. 15.10.1955, rights accrued cannot be washed of subsequently by the Notification dated 24.12.1955, declaring village Phephana to be Bhakra project area. In the present case, we have already held that the appellant had not acquired any Khatedari under Section 15 of the Act of 1955. Thus, question of washing of rights does not arise. The learned counsel for the non-appellants , however, submitted that as per the proviso to Section 15, no Khatedari rights can be accrued in the areas falling in Gang, Bhakra, Chambal or Jawai project.In fact this argument also became academic as we are of the opinion that no Khatedari right accrued to the appellant under Section 15 of the act of 1955.

The issue as to whether the land in question was available for allotment to the non-appellant, despite of its being occupied by the appellant, reference of the Colonization Act, 1954 and Rules of 1955 is required to be given. The word “Colony” has

been defined under Section 2 (ii) of the Rajasthan Colonization Act 1954 and as per the definition, an area becomes a colony, if a Notification is issued in the Official Gazette. So far as Rules of 1955 are concerned "Government land" has been defined under Rule 2 (v) which reads as under :-

> "**R. 2 (v)** "Government land" means and includes all unoccupied lands, common village lands and lands held under temporary cultivation lease or leases granted for any specific period or under any specific condition if such period of lease has expired or its conditions have not been duly fulfilled and all such lands of the resumed Jagir Villages or resumed Zamindari andBiswedari estates on which no Mauroosie or Khatedari rights have been conferred on any tenant and which have been entered in Khatoni Paimaish and other records of the last Settlement as "Arazi Maqbuza Jagirdar or Bhogtan" or as "Arazi Maqbuza Thikana" or as "Shamlat"."

Rule 3 of the Rules of 1955 provides term of allotment, whereas Rule 4 provides regarding cancellation of old leases. The argument of the learned counsel for the appellant is that the land in question cannot be termed as a Government land, because it was occupied by him. Thus, it was not an unoccupied

land so as to attract the provisions of Rule 2 (v).

We have given our thoughtful consideration to the aforesaid issues and find that even the conduct of the appellant itself, shows that the land in question was treated to be a Government land by him. It is admitted case that the appellant had submitted an application for allotment of land in question under the Rules of 1955, treating it to be a Government land. The application of the appellant was thereafter rejected, and even appeal preferred thereafter was decided by the Competent Authority in the year, 1961, which clearly means that the appeal preferred by the appellant to claim his right under the Rules of 1955 were based on the facts that the land in question is a government land. Though the learned counsel for the appellant submitted that even if the appellant made such an application, then it was under some misguidance or an ill-advise, specially when the appellant was having Khatedari rights as per Section 15 of the Act of 1955, thus mere submission of an application under misguidance cannot take away his accrued rights. During the course of arguments, it was specifically asked as to whether the appellant had treated the land in question to be a government land or not for the purpose of filing an application for allotment, learned counsel for the appellant accepted the fact that it was treated to be Government land. In any case, the argument raised by the learned counsel for the appellant is that

the land in question being occupied by him thus, it should not have been considered to be unoccupied land available for allotment. The argument of the learned counsel was considered in the light of the definition of "Government land" and a bare perusal of the definition revealed that occupied land does not mean and to create right in favour of a trespasser. Though, in this case, the appellant could not prove himself to be a tenant in the Samvat 2011 and 2012, i.e., years 1954 and 1955 in view of the interpolation of the name of the appellant in the Khasra Girdawaris, thus it cannot be held that the land in question was occupied land by the appellant in the years 1954 and 1955 in lawful manner. Thus, we cannot accept the argument of the learned counsel for the appellant that as per Rule 2 (v) of the Rules of 1955, the land in question was occupied land hence, challenge to the allotment of the land to the non-appellant on that ground cannot be accepted. As no other ground was raised in regard to the allotment of the land to the non-appellant, we conclude the said issue holding that the allotment of land in favour of non-appellant was not illegal.

The next submission needs consideration is regarding Jamabandi entries of Samvat 2013 – 2014 showing the name of the appellant, it was submitted that once the name of the appellant was entered in the Jamabandi, no right can be created in favour of others. In that regard, the contents of the suit were

looked into to see as to whether any ground was raised in this regard. Perusal of the plaint shows that the appellant had not framed any factual basis to claim his right persuance to the Jamabandi of Samvat 2013 and 2014, though those documents were subsequently submitted before the Assistant Collector. In any case, the right of petitioner pursuant to the Jamabandis of 2013 and 2014 cannot be accepted as the Rajasthan Tenancy Act came into force in Samvat 2012 and as per proviso to Section 15 of the Act of 1955, the area falling in Bhakra project etc. was not available to claim any Khatedari right. Admittedly, vide the Notification dated 24.12.1955, village Phephana was declared a colony area of Bhakra project, hence no Khatedari rights were available in Samvat 2013 – 2014 to any one in that area in view of the proviso to Section 15 of the Act of 1955. In the present case, the Khatedari rights persuance to the Jamabandis are claimed by the appellant, for the first time, in appeal, based on subsequent Jamabandi of Samvat 2013 – 2014, which otherwise cannot create right in favour of the appellants, contrary to the provisions of an Act of 1955, therefore, apart from the fact that the appellant cannot be allowed to frame a new case at the appellate stage, but even if the issue is taken into consideration, no Khatedari right exists in favour of the appellant pursuant to the Jamabandis of Samvat 2013 and 2014 contrary to provision of the Act of 1955.

The last question raised by the learned counsel for the appellant pertains to adverse possession against two private non-appellants No. 1 and 2. It was argued that the appellant had not claimed adverse possession against the State Government so as to consider 30 years period of limitation for adverse possession. It was submitted that the appellant had claimed adverse possession against the non-appellants No. 1 and 2, therefore 12 years' period was required to be taken note of thus learned single Judge has wrongly applied the period of 30 years to determine the issue of adverse possession. The perusal of the pleading does not demonstrate that the appellants had submitted the fact that the possession of the land in question was given to them by non-appellants No. 1 and 2 so as to claim right of adverse possession against them, more so, when the facts available on record show that even litigation pertaining to possession inter se between appellant and non-appellants No. 1 and 2 remain pending. Thus, the learned Single Judge rightly arrived at the conclusion regarding appellant rights of adverse possession. Hence, the conclusion of the learned Single Judge in that regard cannot be interfered.

In the light of the discussions made above, we find no merit in the appeal hence the same is dismissed, with no order as to costs.

(MUNISHWAR NATH BHANDARI),J. (P.B.MAJMUDAR), J.

scd.